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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,898	12/09/2003	Michael R. Spencer	098719-100001	4701
34026	7590	03/15/2006		
JONES DAY 555 SOUTH FLOWER STREET FIFTIETH FLOOR LOS ANGELES, CA 90071			EXAMINER BLANKENSHIP, GREGORY A	
			ART UNIT 3612	PAPER NUMBER
DATE MAILED: 03/15/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/731,898	<b>Applicant(s)</b> SPENCER ET AL.	
	<b>Examiner</b> Greg Blankenship	<b>Art Unit</b> 3612	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11, 12 and 16-18 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13-15, 19-27 and 29-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| ✓ 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)           | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5, 6, 8, 10, 13-15, 24-27, and 29-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Wheatley (6,386,616).

In reference to claims 1 and 2, Wheatley discloses a cover system (21) for an open top truck box (16). Figure 1 shows the truck box (16) with a rear wall (14) and two sidewalls (12).

While not shown, the truck box also has a front wall. The cover system (21) includes a flexible cover material (22) that has dimensions approximately the same as the dimensions of the truck box (16). Rails (24,26) extend along the upper edge (18) of sidewalls (12). Each rail (24,26) has a channel that has an opening, defined between walls (48,60), which face outwardly. Elongated fastening means (30) are rigid and have integrally formed fastening surfaces (72). The fastening surfaces (72) engage fastening means (32) that are along the edge of the downwardly facing surface of the flexible cover material (22). The elongated fastening means slide along the rails while being dimensioned to be incapable of lateral movement from the channel as shown in Figure 3. In reference to claims 5 and 24, mounting flanges extend from the inner wall (40) of the rail (24,26) as seen in Figure 3. In reference to claims 6 and 25, C-clamps are used to attach the rails (24,26) to the top edges as

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disclosed on lines 46-48 of column 2. In reference to claim 8, the channel is inclined. In reference to claims 10, 13, 29, and 32, the female connectors (32) are located along the edge of the flexible material (22). The material directly around the female connectors (32) meets the claim limitations of the claimed "first fastening material". Second fastening material (72) is integrally formed with elongated slats (62) and is reversibly engageable with the first fastening material (32). The second fastening material (72) is prevented from sliding removal from the track by stops (27). In reference to claims 14, 30, 31, 33, and 34, the slats (62) are shorter than the channel, as seen in the Figures. In reference to claims 15 and 26, the stops (27) are end caps that are detachably connected to opposing ends of the rails (24,26).

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheatley (6,386,616) in view of Byrd et al. (4,496,184).

Wheatley does not disclose the fasteners being hook and loop material.

Byrd et al. teach the use of hook and loop material (68,76) to connect a truck box cover (26) to a rail (72).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the snaps of Wheatley, with the hook and loop fasteners such that, in reference to claim 19, the loop material is affixed to the flexible cover and the hook material

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is permanently affixed to the slats and, in reference to claim 20, the hook material is affixed to the flexible cover and the loop material is permanently affixed to the slats to provide a suitable fastener that won't be as difficult to undo when subjected to freezing rain

3. Claims 4 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wheatley (6,386,616) in view of Tucker (5,261,719).

Wheatley does not disclose the frame being made of extruded aluminum.

Tucker teaches the forming of rails formed of extruded aluminum.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the rails of Wheatley by extruding aluminum as an obvious expedient that would result in a lightweight and rust-resistant rail.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wheatley (6,386,616).

Wheatley does not disclose the channel extending substantially vertical.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the channel of Wheatley such that it extends substantially vertical to improve the connection between the rail and the flexible cover by increasing the resistance of the connection to disconnections caused by cargo bouncing up into the flexible cover.

***Allowable Subject Matter***

5. Claims 9, 11, 12, and 16-18 are allowed.

***Response to Arguments***

6. Applicant's arguments filed 12/27/2005 have been fully considered but they are not persuasive. The applicant has argued that slat (30) of Wheatley is not elongated because the ends are bent such that the resulting middle section appears to be square. The examiner disagrees with this interpretation because the bent ends form part of the slat (30) of Wheatley. Figure 4 clearly shows

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slat (30) to be elongated such that it is longer than it is wide. The applicant has also argued that element (30) cannot be a slat because it is not flat due to the bent end portions (63). The examiner has included the results of “slat” on dictionary.com as evidence that the definition of slat does not require an object to be flat. The first definition is stated as “A narrow strip of metal or wood, as in a Venetian blind”. Also, it should be noted that Figures 4, 6, and 10 of the applicant’s own application shows the claimed “slat” as having a projections (55,56) that extend perpendicularly from the slat. The examiner believes this is similar to the bent ends (63) of the slats (30) of Wheatley in that projections extend away from a surface of the slat to produce a surface that is not flat. Therefore, the argument is not persuasive.

7. The applicant has argued that the slat of Wheatley is not mounted within a channel such that the fastening surface is exposed through the channel. The examiner disagrees since Figure 3 shows the ends (63) of the slat (30) are mounted in channels. The surfaces that extend out from the channels form the fastening surface. This surface is exposed through the channel because it extends through the channel.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

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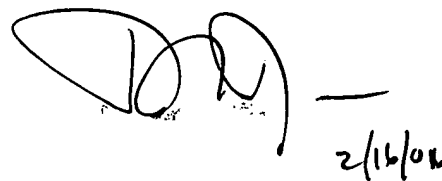
calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Blankenship whose telephone number is 571-272-6656.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gab  
February 9, 2006

A handwritten signature in black ink, appearing to be "D. Glenn Dayoan", followed by a horizontal line and the date "2/16/06".

D. GLENN DAYOAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600